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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051140
Party	Plaintiff Leonid Nahshin
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	02/11/2010
Attachments	Amended Petition to Cancel filed on Feb. 11, 2010.pdf (4 pages)(145514 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 3,350,041,
For the mark NIC OUT,
Registered on the Principal Register on December 4, 2007.

Leonid Nahshin,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Petition No. 92051140
	:	
Product Source International, LLC,	:	
	:	
Registrant.	:	

AMENDED PETITION TO CANCEL

Petitioner Leonid Nahshin (hereinafter "Petitioner"), a Israeli Citizen located and doing business at 153/36 Beer-Sheva, Israel, but with a real and effective business presence in the United States, believes that he is and will continue to be damaged by the continued registration of U.S. Registration 3,350,041 for the mark NIC OUT and, accordingly, hereby files this amended petition to this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 , 37 C.F.R. § 2.111(b), as well as the Order dated January 25, 2010 in this matter.

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant Product Source International, LLC's (hereinafter "Registrant") mark NIC OUT as more fully displayed in U.S. Registration No. 3,350,041 would be likely to cause confusion with Petitioner's common law rights in the mark NIC-OUT which retains priority of use over Registrant's mark NIC OUT by virtue of its prior use in commerce in the United States.

Statement of Facts

In support of the instant Petition to Cancel, it is alleged that:

1. Petitioner is the owner of the mark NIC-OUT used on or in connection with a cigarette filter holder to reduce the inhalation of tar and nicotine.

2. Petitioner first used the mark NIC-OUT in connection with the above-identified goods in interstate commerce at least as early as October 1, 2000.

3. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.

4. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.

6. Based upon information and belief, Registrant is a New Jersey Limited Liability Company corporation located and doing business at 13 Coleman Road Berlin, NJ 08009.

7. Registrant is using the mark NIC OUT in connection with [m]echanical cigarette filters for removing nicotine in International Class 34.

8. Registrant's application to register the instant mark identified more fully in U.S. Registration No. 3,350,041 was filed with the United States Patent and Trademark Office on March 21, 2006.

9. Upon information and belief, Registrant first used the mark NIC OUT in connection with the goods covered by its registration in the United States in December of 2003.

10. As such, Petitioner's rights in the mark NIC-OUT has priority of use over Registrant's rights in the mark NIC OUT, U.S. Registration No. 3,350,041, inasmuch as Petitioner commenced its use of the mark NIC-OUT in connection with his services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark NIC OUT.

11. Petitioner believes that consumers confronted with the Registrant's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Registrant's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.

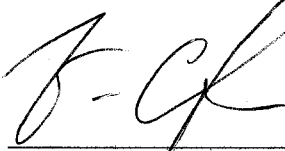
12. The continued registration of Registrant's mark confers upon Registrant rights to which it is not entitled and is inconsistent with the prior established rights of Petitioner in his mark NIC-OUT.

13. By reason of the foregoing, Registrant will be seriously damaged by the continued registration of Registrant's mark NIC OUT.

WHEREFORE Petitioner Leonid Nahshin, by counsel, prays that the instant petition be granted and U.S. Registration No. 3,350,041 be cancelled.

Respectfully submitted this 11 day of February, 2010.

Law Offices of Vera Chernobylsky



Vera Chernobylsky, Esq.
4623 Dunman Avenue
Woodland Hills, CA 91364
Attorney for the Petitioner

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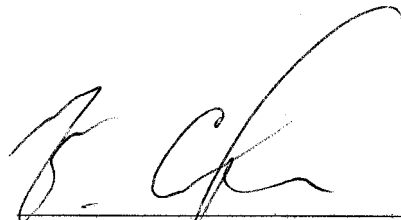
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Petition No. 92051140

CERTIFICATE OF SERVICE

I HERBEY CERTIFY that a true and accurate copy of the foregoing pleading was submitted, this 11 day of February, 2010, to the following via first-class U.S. Mail, postage pre-paid:

Jay DiMarino
A.J. DiMarino PC
57 Euclid Street, Suite A
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Vera Chernobytsky, Esq.